CP-1002

003

IN THE HIGH COURT OF CHHATTISGARH
AT BILASPUR

WRIT PETITION No. 210 2004

PETITIONER

Sakti Brata Lodh
S/o Late S. C. Lodh
aged about 53 years,
R/o Sardar Patel Nagar,
Jamnipali, Korba west
SADA Colony, Senior MIG A/3
Korba, Distt. Korba (C.G.)

P. N. No. 2410 Presented by Shri Ghurmale V. Bhagtani dated 20.10.04

VERSUS

RESPONDENTS :

1. Union of India
Through Secretary,
Ministry of Steel & Mines,
Department of Mines,
Shashtri Bhawan, New Delhi.

2. State of Chhattisgarh
Through Director,
Industrial Health & Safety,
Raipur (C.G.)

3. Managing Director,
Bharat Aluminium Co. Ltd.
(BALCO), Korba Aluminium
Project, Balco Township,
(Chhattisgarh)

4. Chairman-cum-Managing Director
M/s. Sterlite Industries Ltd.
Korba Aluminium Project,
Balco Township, (Chhattisgarh)

RECEIVED COPY 20/10/04 Clerk to A. G. Bilaspur

20/10/04

Received Copy Shri Yadav 20-10-04 Clerk to VINAY HARIT Senior Central Government Standing Counsel CHHATTISGARH HIGH COURT

5. Head Security,
Fire Department,
Balco Township,
Korba (C.G.)

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

1. Particulars of

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION NO.210/2004

Sakti Brata Lodh 151

Vs.

Union of India & ors.

Petitioner in person.
Shri Abhishek Sinha, counsel for respondents no.3,4 & 5.

O R D E R

Heard.

2. The petitioner has filed the instant petition on the allegation that he has been forced to resign from service.

3. The petitioner submits that he joined the services on 3/9/1981 and served for about 21 years. He applied for voluntary retirement on 19/1/2001. It is submitted that the said application was not accepted and the same was rejected on 26/3/2002 vide Annex.P/2 and the information was sent to the petitioner. It is also submitted that thereafter on 5/10/2002, the petitioner submitted another application (Annex.P/6) for accepting the voluntary retirement under Installment Payment Plan (Annex.P/5). It is also submitted that on the same day i.e. 5/10/2002 the petitioner was forced to sign a resignation letter and the order (Annex.P/7) was passed that the resignation submitted by him is accepted and he is relieved from the services of the Company.

4. On the other hand, learned counsel appearing for respondents no.3,4 and 5 raised an objection that the writ petition is not maintainable because the BALCO is now the private company. He further submits that initially the petitioner submitted the application for voluntary retirement. On the said application, AGM (INS & Fire) made a remark on 2/2/2001 that since he is the only 'Executive' of Fire discipline in the Company and Fire Department is already having acute shortage of manpower, his V.R. is not recommended. It is submitted that the said application was rejected vide order dated 26/3/2002. It is further submitted that thereafter the petitioner submitted the resignation under his own handwriting and signature vide Annexure-2, which was accepted by the authorities concerned of the Company with a direction that he is relieved from the services of the Company and he will be paid Notice Pay equivalent to three months salary. It is also submitted that the petitioner preferred a mercy appeal, which was also not accepted.

5. The petitioner submits that the resignation has been forcefully taken from him. The contention is that the resignation is conditional one inasmuch as the car loan taken from the Company has not been waived.

6. So far as ground regarding maintainability of petition is concerned, this Court has dealt with the matter in great in the case of K.P. Chandrawanshi and nine others –v- National Thermal Power Corporation Limited and Two others reported in 2004(1) C.G.L.J. 268. Paragraphs 15, 16 and 17 of the decision are relevant and quoted below:-

> *"15. The first point raised by the learned counsel for the respondent is that as the petitioners have not been able to show infringement of any of their fundamental right or violation of any legal right, therefore, petition for issuance of writ of mandamus cannot be entertained. The second point argued by the learned counsel for the respondents is that these writ petitions are not maintainable for the reason that the petitioners have alternative efficacious remedy available to redress their grievance. Their case is covered under the Madhya Pradesh Industrial Relations Act, 1960. As per the provisions of Section 51 of the said Act, they ought to have approached the Labour Court instead of approaching this Court by invoking the extraordinary jurisdiction under Article 226 of the Constitution of India. However, as far as the second point is concerned, since the petitions are being heard finally on their merits, therefore, the learned counsel for the respondents had not laid much stress on this point.*
>
> *16. On the other hand, learned counsel for the petitioners argued that the question involved in these petitions is pure and simple interpretation of certain agreements and appointment letters and no disputed facts are involved, therefore, this Court is entitled to invoke the jurisdiction under Article 226 of the Constitution of India and the petitions of the petitioners should not be thrown out on these technical objections as the question involved relates to life of the petitioners, their family members and their right to continue in the job as per the terms and conditions of the appointment, as the action of respondent transferring the petitioners' services to BALCO is*

arbitrary and unreasonable. Therefore, the writ petitions are maintainable.

17. In this connection, the settled law is that the question of alternative remedy is rule of discretion and not the rule of law. The Hon'ble Apex Court in the matter of ABL International Limited and another vs. Export Credit Guarantee Corporation of India Limited and others held that,

> *'While entertaining an objection as to the maintainability of a writ petition under Article 226 of the Constitution of India, the Court should bear in mind the fact that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provisions of the Constitution. The High Court having regard to the facts of the case, as a discretion to entertain or not to entertain a writ petition. The Court has imposed upon itself certain restrictions in the exercise of this power (See : Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and others) And this plenary right of the High Court to issue a prerogative writ will not normally be exercised by the Court to the exclusion of other available remedies unless much action of the State or its instrumentality is arbitrary and unreasonable so as to violate the constitutional mandate of Article 14 for other valid and legitimate reasons, for which the Court thinks it necessary to exercise the said jurisdiction.'*

In para 27 of the above judgment, the Court has held that 'following legal principles emerge as to the maintainability of a writ petition :-

> *(a) In an appropriate case, a writ petition against a State or an instrumentality of a State arising out of a contractual obligation is maintainable.*
>
> *(b) Merely because some disputed questions of facts arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all case as a matter of rule.*
>
> *(c) A writ petition involving a consequential relief of monetary claim is also maintainable."*

In the decision in the case of K.P. Chandrawanshi and nine others (Supra), this Court has held that there is no absolute bar in entertaining the writ petitions.

7. Perused the record and examined the matter. It is pointed out that the petitioner submitted the resignation (Annex.2) under his own handwriting and signature, which is quoted below:

> *"To,*
> *The Vice President,*
> *Balco-Korba.*
> *Through-Proper Channel.*
> *Sub: Tendering resignation.*
> *Respected Sir,*
> *With due respect, I beg to state that I have not in a position to work, due to some domestic problem at home. Therefore, I tender my resignation from the services of the Company.*
> *I have taken HBA + Car loan from the Company, the same may be waived.*
> *I hope you will consider my above request of waive off the outstanding loans.*
> *Thanking you,*
> *With kind regards,*
>
> *Yours sincerely*
> *Sd/-5-10-2002*
> *(S.B. Lodh)*
> *P. No.07816*
>
> *Date:5/10/2002*
> *Korba."*

8. The aforesaid resignation was accepted by the authorities concerned of the Company vide Annexure-P/7. He was given the three months Notice Pay which he has accepted. The order Annex.P/7 reads as under:

> *"Bharat Aluminium Co. Ltd.*
> *No.KB-Pers/Estt./ExJ-7816 dated 5th October, 2002.*
>
> *ORDER*

Resignation dated 5th October, 2002 tendered by Mr. S.B. Lodh (Emp.No.07816), Asstt. Manager (Fire Control), BALCO, Korba has been accepted by the Competent Authority with effect from 5/10/2002 (AN). Accordingly, he is relieved from the services of the Company on 5/10/2002 (AN). He will be paid Notice Pay equivalent to 3 (three) months' salary (Basic+D.A.).
He may collect his dues, if any, from Finance & Accounts Department within two working days on submission of No Dues Certificates from all concerned Departments. He is also advised to vacate his Company's accommodation forthwith.

Sd/-
Manager (Personnel)
Mr. S.B. Lodh (Emp. No.07816)
Assistant Manager (Fire Control)
BALCL, Korba.

Copy to:
1. Sr. GM (Finance), 2. Head-Admn., (3) Manager (F & A)/EAG, (4) PF."

Then the petitioner on 15/10/2002 submitted the mercy appeal (Annexure-3) wherein he stated to the Vice President (HR), Balco that he has submitted the resignation on 5/10/2002, which was accepted by the Management and some facilities are not given to the employees who are resigning from service. Annexure-3 reads as under:

"To,
The Vice President (HR),
Balco-Korba.

Sub: Mercy appeal for considering the following facilities.

Respected Sir,

With due respect, I beg to state that I have tendering my resignation on 5/10/2002, which was accepted by the management on 5/10/2002 (AN).
As per COS rule the following facilities are not given to employees who are resigning from service.

(1) Leave encashment-50% of the total.
(2) R.T.A. for self & family members.
(3) Transportation & Settlement allowance.
(4) Packing Charges.
So I therefore request your honour may kindly consider the above facilities extended to me mercifully in which I may get some financial help to shift my materials in safe and good manner on 100% basis.
Thanking you Sir, for consideration the above on humanitarian ground as a merciful act please.

Yours faithfully,
Sd/-15-10-2002
(S.B. Lodh)
Ex.Emp.No.07816"

Thereafter the petitioner again wrote a letter on 29/10/2002 for adjustment of outstanding balance, which reads as under:

"To,
The Vice President (HR),
Balco-Korba.

Sub: Adjustment of my outstanding balance..

Respected Sir,

With due respect, I beg to state that the outstanding balance amount may please be adjustment from the payment due to me from the Company.
In case still there is any outstanding amount for recovery, I will give a post dated cheque for the same.

Dt.29/10/2002

Yours faithfully,
Sd/-15-10-2002
(S.B. Lodh)
Ex Asstt. Manager (Fire)
P. No.07816"

It is pertinent to mention here that vide Annex.P/8 dated 14/10/2002 the petitioner was advised to deposit the outstanding lying against him. The service certificate

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(Annex.P/9) was also issued to him on 18/10/2002 regarding the emoluments drawn by him.

9. From the above facts, it is amply clear that the petitioner himself submitted the resignation on his own handwriting, which was accepted by the authorities concerned. Thereafter various correspondences were also made between the period 14/10/2002 to 29/10/2002. This all goes to show that there was no undue influence, coercion or pressure. The averment regarding the coercion or pressure has been made for the first time in the instant writ petition, that too casually without any detail as to who put the pressure and as to why he would put the pressure. Once the person submitted his resignation voluntarily, he is not entitled for any mercy. It is also pointed out that dues have been given to the petitioner which he has withdrawn.

10. The Apex Court in the case of *J.K. Cotton Spinning and Weaving Mills Company Ltd. vs. State of U.P. and others* reported in *(1990) 4 SCC 27* has held that where a contract of service is determined on the employee exercising his right to quit, such termination cannot be said to be at the instance of the employer to fall within the first part of the definition of retrenchment in Section 2(s) of the State Act.

11. The Apex Court further in the case of *Srikantha S.M. vs. Bharath Earth Movers Ltd.* reported in *(2005) 8 SCC 314* considered the term 'resignation'. It has been held as under :

> *"....The term 'resignation' has not been defined in the Service Rules. According to the dictionary meaning, however, 'resignation' means spontaneous relinquishment of one's own right. It is conveyed by the Latin maxim Resignatio est juris propii spontaneo refutatio. (Resignation is a spontaneous relinquishment of one's own right). In relation to an office, resignation connotes the act of giving up or relinquishing the office. 'To relinquish an office' means 'to cease to hold the office' or 'to leave the job' or 'to leave the position'. 'To cease to hold office' or 'to lose hold of the office' implies to 'detach', 'unfasten', 'undo' or 'untie', 'the binding knot or link' which holds one to the office and the obligations and privileges that go with it."*

12. The Apex Court also in the case of *State Bank of Patiala vs. Phoolpati* reported in *(2005) 1 SC-SLR 511* has held as under :

> *"A complete and effective act of resigning office is one which severs the link of the resignor with his office and terminates his tenure. This position was highlighted by a Constitution Bench of this Court in Union of India and others v. Gopal Chandra Misra and others, (1978) 2 SCC 301, and reiterated in Balram Gupta v. Union of India and another, (1987) Supp SCC 228, J.N. Srivastava v. Union of India and another, (1998) 9 SCC 559, Nand Keshwar Prasad v. Indian Farmers Fertilizers Cooperative Ltd., and others, (1998) 5 SCC 461 and Shambhu Murari Sinha v. Project and Development India Ltd, AIR 2002 SC 1341."*

In the instant case, the petitioner submitted the resignation which was accepted and he has been relieved.

Thereafter various correspondences were made between the parties. All dues have also been withdrawn by the petitioner. As such, he cannot turn round and is not entitled for relief.

13. In view of the above discussions, not a case for interference by this Court while exercising the extraordinary jurisdiction under Article 226/227 of the Constitution of India.

14. Accordingly, this writ petition fails and is dismissed.

15. At this stage, the petitioner submitted that he is coming from outside. He prays for supplying copy of the order.

16. Copy of this order be supplied to the petitioner free of costs and it be despatched to his address.

Sd/-
Fakhruddin
Judge

13/1/06

H/P-